

known to be interested in the property. It is contemplated in BOB Circular No. A-95 that State, regional, and metropolitan planning and development clearinghouses will be established and utilized fully to provide liaison between the disposal agency and agencies of the State and local governments. Accordingly, any such clearinghouses also shall be given copies of the notices.

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper regional office of any interested Federal agencies listed below:

- (1) Bureau of Outdoor Recreation, Department of the Interior;
- (2) Department of Health, Education, and Welfare;
- (3) Federal Aviation Administration, Department of Transportation;
- (4) Fish and Wildlife Service, Department of the Interior; and
- (5) Federal Highway Administration, Department of Transportation.

(i) Upon receipt of the formal application for the property, the disposal agency shall consider and act upon it in accordance with the provisions of the statute and applicable regulations. If comments are received indicating that the disposal is incompatible with State, regional, or local development plans and programs, the disposal agency shall attempt to resolve the differences consistent with its statutory responsibilities in the disposal of surplus property.

#### Subpart 101-47.49—Illustrations

1. Section 101-47.4906 is amended by adding a new paragraph at the end of the sample notice as follows:

§ 101-47.4906 Sample notice to public agencies of surplus determination.

If any public agency considers that the proposed disposal of the property is incompatible with its development plans and programs, notice of such incompatibility must be forwarded to:

(Name of disposal agency)

(Address)

time frame prescribed above.

2. Section 101-47.4906-1 is amended by revising the second paragraph of the sample letter as follows:

§ 101-47.4906-1 Sample letter for transmission of notice of surplus determination.

Included in the attached notice are a description of the property and procedural instructions to be followed if any public agency desires to submit an application for the property. Please note particularly the name and address given for filing written notice if any public agency desires to submit such an application, the time limitation within which written notice must be filed, and the required content of such notice. Additional instructions are provided for the submission of comments regarding any incompatibility of the disposal with any public agency's development plans and programs.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 485(c))

**Effective date.** This regulation is effective upon publication in the FEDERAL REGISTER.

Dated: May 25, 1970.

ROBERT L. KUNZIG,  
Administrator of General Services.

[F.R. Doc. 70-6712; Filed, June 1, 1970; 8:45 a.m.]

## Title 42—PUBLIC HEALTH

### Chapter I—Public Health Service, Department of Health, Education, and Welfare

#### SUBCHAPTER D—GRANTS

#### PART 57—GRANTS FOR CONSTRUCTION OF HEALTH RESEARCH FACILITIES (INCLUDING MENTAL RETARDATION RESEARCH FACILITIES), TEACHING FACILITIES, STUDENT LOANS, EDUCATIONAL IMPROVEMENT AND SCHOLARSHIPS

##### Subpart D—Nursing Student Loans

Notice of proposed rule making, public rule making procedures and postponement of effective date have been omitted in the issuance of the following revised Subpart D—Nursing Student Loans, which relates solely to loans to students of nursing. The purposes of this revision are to implement the amendments made to Part B of Title VIII, Public Health Service Act, by Public Law 90-490 (82 Stat. 779), including a new formula for allotment of funds to schools of nursing and the provisions relating to a change in the grace period, penalty charges for failure of timely repayment, a minimum monthly repayment rate, a uniform interest rate for student loans, further cancellations of a portion of a loan to a borrower who serves as a nurse in a public or other nonprofit hospital in an "area which has a substantial shortage of nurses at such hospitals", and the authorization of a school participating in both the Nursing Student Loan and Scholarship programs to transfer to its Scholarship account a portion of the Federal Capital Contributions paid to the school; and to clarify the procedures with regard to the making of loans from a revolving fund to public and other nonprofit schools of nursing to provide

all or part of the capital needed for making loans to students of such schools. A number of other technical or clarifying changes are also included.

The following revised Subpart D shall become effective on the date of publication in the FEDERAL REGISTER.

Subpart D is revised to read as follows:

##### Subpart D—Nursing Student Loans

- |        |   |
|--------|---|
| Sec.   | Definitions.  |
| 57.301 | Eligibility of schools.   |
| 57.302 | Application by school.  |
| 57.303 | Agreements for Federal Capital Contributions and Federal Capital Loans.           |
| 57.304 | Allotment and payment of Federal Capital Contributions and Federal Capital Loans. |
| 57.305 | Federal Capital Loan Promissory Note.   |
| 57.306 | Nursing Student Loan Funds.   |
| 57.307 | Nondiscrimination.  |
| 57.308 | Eligibility and selection of student loan recipients.                             |
| 57.309 | Maximum amount of student loan.   |
| 57.310 | Evidence of student indebtedness—promissory note; security.                       |
| 57.311 | Payment of student loans.   |
| 57.312 | Repayment and collection of student loans.  |
| 57.313 | Provisions for student loan cancellations.  |
| 57.314 | Records, reports, inspection.   |
| 57.315 | Noncompliance.  |
| 57.316 |   |

**AUTHORITY:** The provisions of this Subpart D issued under secs. 215, 823, Public Health Service Act as amended, 58 Stat. 690, 82 Stat. 783; 42 U.S.C. 216, 297b.

##### § 57.301 Definitions.

All terms not defined herein shall have the same meaning as given them in the Act. As used in this subpart, the following terms shall have the following meanings:

(a) **Act.** Title VIII of the Public Health Service Act, as amended.

(b) **Secretary.** The Secretary of Health, Education, and Welfare, or any other officer or employee to whom the authority involved has been delegated.

(c) **Nursing Student Loan Fund or Fund.** A fund established at a school pursuant to Part B of the Act, either with Federal Capital Contributions together with Institutional Capital Contributions, or with Federal Capital Loans. Where a school received monies from both sources of payment, reference is made to funds.

(d) **Federal Capital Contribution.** The capital portion allotted by the Secretary to a school for deposit in a Nursing Student Loan Fund pursuant to section 824 of the Act.

(e) **Institutional Capital Contribution.** The money provided by a school, in an amount not less than one-ninth of the Federal Capital Contribution, and deposited in a Nursing Student Loan Fund.

(f) **Federal Capital Loan.** A loan made by the Secretary to a school pursuant to section 827(a) of the Act, the proceeds of which are to be deposited in a Nursing Student Loan Fund.

(g) **Student loan.** The amount of money advanced to a student by a school from a Nursing Student Loan Fund under a single properly executed promissory note.

(h) **Full-time student.** A student who is enrolled in a school and pursuing a



course of study which constitutes a full-time academic workload, as determined by the school, leading to a diploma in nursing, an associate degree in nursing or an equivalent degree, a baccalaureate degree in nursing or an equivalent degree, or an advanced degree in nursing.

(i) *Ceases to be a full-time student.* A student shall be considered to have ceased to be a full-time student upon the first day of the month which is nearest to the date upon which he ceases to be a full-time student as defined herein.

(j) *Academic year.* The traditional, approximately 9-month September to June annual session. For the purpose of computing academic year equivalents for students who, during a 12-month period, attend for a longer period than the traditional academic year, the academic year will be considered to be of 9 months' duration.

(k) *Fiscal year.* The Federal fiscal year commencing on the first day of July and ending on the 30th day of June.

(l) *Permanently and totally disabled.* The inability to engage in any substantial gainful activity because of medically determinable impairment, which impairment is expected to continue for a long and indefinite period of time, or to result in death.

(m) *Uniformed service.* The Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and the Public Health Service.

(n) *National of the United States.* (1) A citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States (8 U.S.C. 1101(a)(22)).

#### § 57.302 Eligibility of schools.

To be eligible for a Federal Capital Contribution or a Federal Capital Loan under this subpart, the applicant school shall:

(a) Meet the applicable requirements of sections 822(a) and 827(a) of the Act; and

(b) Submit an application as required by § 57.303.

#### § 57.303 Application by school.

(a) Each school desiring a Federal Capital Contribution or a Federal Capital Loan under the Act shall submit an application in such form and at such time as the Secretary may require. The application shall be executed by an official authorized to act for the applicant school and to assume on behalf of the applicant school the obligations imposed by the terms and conditions of any Federal Capital Contribution or Federal Capital Loan, including the regulations of this subpart.

(b) Each application shall be reviewed to determine institutional eligibility and the reasonableness of the amount requested. When necessary to these ends, the Secretary may require the submission of additional data.

#### § 57.304 Agreements for Federal Capital Contributions and Federal Capital Loans.

(a) *Federal Capital Contribution Agreements.* No application for a Federal Capital Contribution shall be approved

unless there is in effect an Agreement between the Secretary and the applicant school for Federal Capital Contributions pursuant to section 822 of the Act.

(b) *Federal Capital Loan Agreements.* No application for a Federal Capital Loan shall be approved unless there is in effect an Agreement between the Secretary and the applicant school for Federal Capital Loans containing the terms required by section 827(b) of the Act and such additional terms and conditions, consistent with the applicable provisions of section 822 of the Act, as the Secretary deems appropriate.

#### § 57.305 Allotment and payment of Federal Capital Contributions and Federal Capital Loans.

(a) *Annual allotment.* At a time determined by him, the Secretary shall make allotments to each school with which he has entered into an agreement pursuant to § 57.304. The allotment to each such school, whether in the form of Federal Capital Contributions or Federal Capital Loans or a combination of both, shall be an amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of such allotment to be available for such fiscal year for the Nursing Student Loan Program as the number of full-time students enrolled in such school bears to the estimated total number of full-time students in all such schools in all the States during such year.

(b) *Supplementary allotment from revolving fund only.* From funds which become available during any fiscal year for payment to schools from the revolving fund established by section 827(a) of the Act after the allotments pursuant to paragraph (a) of this section for such fiscal year have been made, the Secretary may, in his discretion and at such time as he shall determine, make supplementary allotments to schools with which he has Federal Capital Loan Agreements and who request funds for such fiscal year in excess of the amounts allotted to them pursuant to paragraph (a) of this section. If the total need for supplementary funds exceeds the amount determined by the Secretary to be available for supplementary allotments, the supplementary allotment to each school shall be reduced to whichever of the following is the smaller: (1) The supplementary amount requested or (2) an amount which bears the same ratio to the amount determined by the Secretary to be available for supplementary allotment as the number of full-time students estimated by the Secretary to be enrolled in such school bears to the estimated total number of full-time students enrolled for such year in all schools which request supplementary allotments. Any amounts remaining after such supplementary allotment may be allotted among schools in such manner as the Secretary determines will best carry out the purposes of the Act.

(c) *Payment.* The allotment of Federal Capital Contributions and/or Federal Capital Loans to a school shall be paid in such amounts, at such times, and in such installments as will not result

in unnecessary accumulation of money in any Nursing Student Loan Fund.

#### § 57.306 Federal Capital Loan Promissory Note.

Each Federal Capital Loan shall be made subject to the terms of a promissory note which shall be executed by an authorized official on behalf of the borrowing school. Each such note shall include such terms with respect to the payment of interest and the repayment of principal as are consistent with the provisions of section 827 of the Act, and shall include such other terms as the Secretary finds reasonably necessary to protect the financial interests of the United States and to promote the purposes of the Act.

#### § 57.307 Nursing Student Loan Funds.

(a) *Funds established with Federal Capital Contributions.* Any fund established by a school with Federal Capital Contributions shall be deposited and carried in a special account of such school. There shall be in such fund at all times monies representing the Institutional Capital Contribution, equal to at least one-ninth of the amount of the balance of the Federal Capital Contributions in such fund.

(1) Except for funds transferred as provided for in subparagraph (2) of this paragraph, such fund shall be used by such school only for (i) loans to students; (ii) capital distribution as provided in section 826 of the Act or as agreed to by the school and the Secretary; and (iii) costs of litigation arising in connection with the collection of an obligation to such fund and interest thereon.

(2) Not to exceed 20 per centum of the amount paid to any such school from the appropriation for any fiscal year ending after June 30, 1969, for Federal Capital Contributions may be transferred to the sums available to the school for scholarship awards under section 860 of the Act, to be used for the same purpose as such sums: *Provided, however,* That where the Secretary finds in a particular case that a school has demonstrated an unusual need for scholarship funds, he may approve the transfer of an amount in excess of 20 per centum of the amount so paid. In the case of any transfer pursuant to this subparagraph, the proportionate amount of the Institutional Capital Contribution (i.e., one-ninth of the amount so transferred) may be withdrawn by the school from such fund.

(b) *Funds established with Federal Capital Loans.* Any fund established by a school with Federal Capital Loans shall be deposited and carried in a special account of such school, and shall be used by such school only for (1) loans to students; (2) repayments of principal and interest on Federal Capital Loans, and (3) costs of litigation arising in connection with the collection of any obligation to such fund and interest thereon.

#### § 57.308 Nondiscrimination.

(a) No eligible applicant shall be denied a student loan on the ground of sex or creed.



(b) Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252), which provides that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, which is applicable to Federal Capital Contributions and Federal Capital Loans under the Act, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80).

**§ 57.309 Eligibility and selection of student loan recipients.**

(a) *Eligibility.* Student loans from any fund may be made only to students who are:

(1) Nationals of the United States or who are in a State for other than temporary purposes and intend to become permanent residents of the United States, or permanent residents of the Trust Territory of the Pacific Islands;

(2) Enrolled, or accepted for enrollment, in the school as full-time students;

(3) In need of the amount of the loan to pursue a full-time course of study at the school; and

(4) Capable, in the opinion of the school, of maintaining good standing in such course of study.

(b) *Selection of loan recipients and determination of need.* It shall be the responsibility of the school to select qualified applicants and to make reasonable determinations of need.

(1) In selecting loan recipients, the school shall give preference to:

(i) Licensed practical nurses, and

(ii) Persons who enter the school as first-year students after enactment of the Act.

(2) In determining whether a student is in need of a loan to pursue a full-time course of study at the school, the school shall take into consideration:

(i) The financial resources available to the student, and

(ii) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis.

(c) *Records of approval or disapproval.* The records of the school shall indicate the basis for approval or disapproval of all or any part of each student application for a loan.

**§ 57.310 Maximum amount of student loan.**

(a) *Maximum per academic year.* The total of the loans made from a fund or funds to any student for an academic year beginning after June 30, 1969, may not exceed \$1,500. The maximum amount loaned during a 12-month period beginning after June 30, 1969, to any student enrolled in a school which provides a course of study longer than the 9-month

academic year may be proportionately increased.

(b) *Aggregate maximum.* The aggregate of loans for all years from a fund or funds may not exceed \$6,000 in the case of any student.

**§ 57.311 Evidence of student indebtedness—promissory note; security.**

(a) *Evidence of indebtedness—promissory note.* Each loan to a student from any fund or funds shall be evidenced by a promissory note executed by the student borrower, in such form as shall be approved by the Secretary.

(1) Any substantive deviations from the promissory note form so approved shall be made only pursuant to approval by the Secretary prior to the making of any loan evidenced thereby, except that a school which elects to require security or endorsement in cases permitted under paragraph (b) of this section may include a provision reflecting such election without prior approval.

(2) With respect to all student loans made after June 30, 1969, each promissory note shall include a provision stating that the loan evidenced thereby shall bear interest, on the unpaid balance of such loan, computed only for periods during which repayment of the loan is required, at the rate of 3 percent per year.

(3) A copy of each executed note shall be supplied by the school to the student maker thereof.

(b) *Security.* Neither security nor endorsement shall be required except that if the borrower is a minor and if under the applicable State law the note executed by him would not create a binding obligation, then the school is permitted to require security or endorsement.

**§ 57.312 Payment of student loans.**

(a) Loans from any fund or funds shall be paid to student borrowers in such installments as are deemed appropriate by the school, except that no borrower may receive more during any given installment period (e.g., semester, term or quarter) than he needs for such period.

(b) No payment shall be made from any fund to any student borrower if at the time of such payment such borrower is not a full-time student as defined in § 57.301(h).

**§ 57.313 Repayment and collection of student loans.**

(a) *Repayment of student loans.* Subject to the provisions of this paragraph any student loan made after June 30, 1969, including interest accrued thereon, shall be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Except as otherwise provided in this paragraph, repayment shall begin 9 months after the student ceases to be a full-time student.

(1) When a borrower, within such 9-month period, reenters the same or another school of nursing as a full-time student, the date upon which interest accrual and the repayment period begin shall be related to and determined by

the date on which he last ceases to be a full-time student at any such school.

(2) Repayment of the loan shall be suspended, and interest thereon shall not accrue, during

(i) All periods of up to 3 years of active duty performed by the borrower as a member of a uniformed service;

(ii) All periods of up to a total of 3 years of service as a volunteer under the Peace Corps Act; and

(iii) All periods up to a total of 5 years during which the borrower is pursuing a full-time course of study at a school leading to a baccalaureate degree in nursing or an equivalent degree, or to a graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing. For purposes of this paragraph, "otherwise pursuing advanced professional training in nursing" shall include only full-time training, beyond the first diploma or degree in nursing received by the particular borrower, of at least one academic year which is provided by an accredited institution or an affiliate thereof, and which will advance the borrower's knowledge of and strengthen his skills in the provision of nursing services.

(3) With respect to student loans made before July 1, 1969, all periods specified in subparagraph (2) of this paragraph after June 30, 1968, may be excluded from such repayment period where so agreed by the school which made the loan and the Secretary: *Provided, however,*

(i) That in no such case may the total of the periods excluded from the repayment period pursuant to subdivision (i) or (ii) of subparagraph (2) of this paragraph and the period between the date on which the borrower ceases to be a full-time student and the date on which, under the terms of the promissory note evidencing such loan, the repayment period is to begin, exceed 3 years and 9 months; and

(ii) That in any such case all periods during which the borrower is pursuing a full-time course of study at a school leading to a baccalaureate degree in nursing or an equivalent degree, or to a graduate degree in nursing, shall be excluded from the repayment period, without limitation; and

(iii) That in no such case may the total of the periods excluded from the repayment period because the borrower is otherwise pursuing advanced professional training in nursing and the period between the date on which the borrower ceases to be a full-time student and the date on which, under the terms of the promissory note evidencing such loan, the repayment period is to begin, exceed 5 years and 9 months.

(4) Each student borrower may (subject to the provisions of subparagraph (3) of paragraph (b) of this section) choose the repayment schedule which he prefers from those in use by the school and approved by the Secretary, but a student borrower may, at his option and without penalty, prepay all or part of the principal and accrued interest at any time.



(b) *Collection of student loans.* (1) Each school at which a Fund is established shall exercise due diligence in the collection of all loans due the fund. The school shall use such collection practices as are generally accepted among institutions of higher education and which are at least as extensive and forceful as those used in the collection of other student loan accounts due the school.

(2) With respect to any student loan made after June 30, 1969, the school may assess a charge for failure of the borrower to pay all or part of an installment when it is due, and, in the case of a borrower who is entitled to deferment benefits under section 823(b)(2) of the Act or cancellation benefits under section 823(b)(3) of the Act, for any failure to file timely and satisfactory evidence of such entitlement. The amount of such charge may not exceed \$1 for the first month or part of a month by which such installment of evidence is late and \$2 for each such month or part of a month thereafter. The school may elect to add the amount of such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(3) With respect to any student loan made after June 30, 1969, the school may provide that during the repayment period of a loan, payments of principal and interest by the borrower with respect to all the outstanding loans made to him from any Nursing Student Loan Fund shall be at a rate equal to not less than \$15 per month.

#### § 57.314 Provisions for student loan cancellations.

(a) *Permanent and total disability.* Determinations as to whether or not a student borrower is entitled to a cancellation of indebtedness in accordance with section 823(b)(4) of the Act on the basis of permanent and total disability shall be made by the Secretary on the recommendation of the school to whose fund the borrower is indebted, supported by such medical certifications as the Secretary may require relating to the borrower's disability.

(b) *Death.* The determination as to whether or not a student borrower is entitled to a cancellation of indebtedness in accordance with section 823(b)(4) of the Act because of the death of the borrower shall be made by the school to which the borrower is indebted on the basis of a certificate of death or such other official proof as is conclusive under State law.

(c) *Full-time employment as a professional nurse.* (1) Any person who obtained one or more loans from a fund or funds established under the Act and who engages in full-time employment as a professional nurse in any public or nonprofit private institution or agency shall be entitled, upon compliance with the statute, regulations, and instructions,

to have a portion of such loans canceled as follows: Ten per centum of the total of such loans (plus accrued interest thereon) which is unpaid on the first day of such service, for each year of such service thereafter, up to 50 per centum of the total of such loans, plus accrued interest thereon.

(2) The determination of whether a borrower is entitled to have any portion of his loan canceled for such full-time employment as a professional nurse shall be made by the institution to whose fund such loan is payable, upon receipt and evaluation of an application for cancellation from such borrower.

(d) *Service in an area which has a substantial shortage of nurses.* (1) Subject to the provisions of section 823(b)(3) of the Act and of this paragraph, any person who obtained one or more loans from a fund or funds established under the Act and who engages in full-time employment as a professional nurse in a public or other nonprofit hospital in any area which has been determined by the Secretary pursuant to this paragraph to have a substantial shortage of nurses at such hospitals shall be entitled, upon compliance with the statute, regulations, and instructions, to have a portion of such loans cancelled as follows: Fifteen per centum of the total of such loans (plus accrued interest thereon) which is unpaid on the first day of such service, for each year of such service beginning after August 16, 1968, up to 100 per centum of the total of such loans, plus accrued interest thereon.

(2) An area shall be determined to have a substantial shortage of nurses if the number of registered nurse hours of service per patient day in the public or other nonprofit hospital serving such area is lower than the median number of registered nurse hours of service per patient day for all public or other nonprofit hospitals of its category in all States. For purposes of this paragraph, all public or other nonprofit hospitals in all States shall be grouped by the Secretary according to the following categories:

- (i) Short-term general and allied special hospitals,
- (ii) Psychiatric hospitals,
- (iii) Tuberculosis hospitals,
- (iv) Chronic and convalescent hospitals, and
- (v) All other hospitals.

(3) For purposes of this paragraph, a year of service in a public or other nonprofit hospital means any 12-month period of continuous service (i) after the date the person begins service in such hospital if the area primarily served by the hospital is at that time designated as an area in which there is a substantial shortage of nurses, or (ii) after the date as of which the area is designated an area with a substantial shortage of nurses if the area was so designated subsequent to the date that such person began service in the hospital: *Provided*, That, when an area's designation is changed, after a borrower would otherwise be eligible for cancellation of a por-

tion of his loan by serving in the hospital in such area, so that such area no longer has a substantial shortage of nurses, such change in designation shall not affect the eligibility of such borrower to have a portion of his loan canceled for any year in which he continues to serve as a nurse in the hospital in such area.

(4) The determination of whether a borrower is entitled to have a portion of his loan canceled in accordance with this paragraph shall be made by the institution to whose fund such loan is payable, upon receipt and evaluation of an application for cancellation from such borrower.

(5) All determinations of the Secretary pursuant to this paragraph shall be made on the basis of the latest reliable statistical data available to him.

#### § 57.315 Records, reports, inspection.

(a) *Records and reports.* Each Federal Capital Contribution and Federal Capital Loan shall be subject to the condition that the school shall maintain such records, and file with the Secretary such reports relating to its Nursing Student Loan Fund or Funds, as the Secretary may find necessary to carry out the purposes of the Act and the regulations. Where any school has both a fund established with Federal Capital Contributions and a fund established with Federal Capital Loans, records shall be kept separately for each fund. All records shall be retained until such time as agreed upon with the Secretary that there is no further need for retention.

(b) *Inspection and audit.* Any application for a Federal Capital Contribution or a Federal Capital Loan shall constitute the consent of the applicant school to inspection and fiscal audit, by persons designated by the Secretary, of the fiscal and other records of the applicant school which relate to such contribution or loan.

#### § 57.316 Noncompliance.

Whenever the Secretary finds that a participating school has failed in a material respect to comply with the Act or the regulations of this subpart he may, on reasonable notice to the school, withhold further payments of Federal Capital Contributions or Federal Capital Loans, and take such other action, including the termination of any agreement, as he finds appropriate to carry out the purposes of the Act and regulations. In such case no further expenditures shall be made from the Nursing Student Loan Fund or Funds involved until the Secretary determines that there is no longer any such failure of compliance.

Dated: March 12, 1970.

ROBERT Q. MARSTON,  
Director,  
National Institutes of Health.

Approved: May 26, 1970.

ROBERT H. FINCH,  
Secretary.

[F.R. Doc. 70-6767; Filed, June 1, 1970;  
8:50 a.m.]



# Title 50—WILDLIFE AND FISHERIES

## Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

### SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

#### PART 17—CONSERVATION OF ENDANGERED SPECIES AND OTHER FISH OR WILDLIFE

By notice of proposed rule making published in the FEDERAL REGISTER on April 10, 1970 (35 F.R. 5961), and of April 14, 1970 (35 F.R. 6069), notice was given that it was proposed to add a new Part 17 to Title 50, CFR.

The proposal published on April 10, 1970 (35 F.R. 5961), listed ports of entry through which all fish and wildlife (with certain exceptions) must enter the United States, and also announced a public hearing which was held in May 11, 1970. Written comments, suggestions, and objections were also invited and received.

The proposal published on April 14, 1970 (35 F.R. 6069) set forth regulations proposed for adoption and invited written comments, suggestions, and objections.

Numerous comments were received regarding both FEDERAL REGISTER proposals.

The Department of the Interior deems it in the public interest that these regulations shall become effective on June 3, 1970, which is the effective date of the Endangered Species Conservation Act of 1969 (83 Stat. 275). However, for the convenience of the public, and to insure the orderly implementation of these regulations, §§ 17.3 *Importation at designated ports* and 17.4 *Importation of fish or wildlife—inspection and documentation* shall not become effective until August 3, 1970.

Consideration having been given to all relevant statements and matters presented, it has been determined to add a new Part 17 to Title 50 CFR, as follows:

Sec.	
17.1	Purpose.
17.2	Definitions.
17.3	Importation at designated ports.
17.4	Importation of fish or wildlife—inspection and documentation.
17.5	Importation of fish or wildlife—proof of compliance.
17.6	Importation of fish or wildlife—marking.
17.7	State markings.
17.8	Export permits.
17.9	Marking of packages or containers.
17.10	Importation of endangered species—general restrictions.
17.11	Endangered species list.
17.12	Importation of endangered species—exceptions.
17.13	Hearings.
17.14	Holding, return, and disposal of seized property.
17.15	Forfeiture of seized property.
17.16	Other laws applicable.
Appendix A	—Endangered Species List.
Appendix B	—Designated Ports and Exceptions thereto.
Appendix C	—Regional Directors.

**AUTHORITY:** The provisions of this Part 17 issued under Public Law 91-135; 83 Stat. 275.

#### § 17.1 Purpose.

The regulations in this part govern the importation and transportation of fish and wildlife, including endangered fish and wildlife. They implement the Endangered Species Conservation Act of 1969 (16 U.S.C. 668cc), the Black Bass Act, as amended (16 U.S.C. 851 et seq.), and the Lacey Act, as amended (18 U.S.C. 43, and 44).

#### § 17.2 Definitions.

The following definitions shall apply in this part, unless otherwise specified:

(a) "The Act" shall mean Public Law 91-135, 83 Stat. 275;

(b) "The Secretary" shall mean the Secretary of the Interior;

(c) "The Director" shall mean the Director of the Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior;

(d) "Person" shall mean any individual, firm, corporation, association, or partnership;

(e) "Fish" shall mean any finfish or any part, products, egg, or offspring thereof, or the dead body or parts thereof whether or not included in a manufactured product;

(f) "Wildlife" shall mean any wild mammal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, products, egg, or offspring thereof, or the dead body or parts thereof whether or not included in a manufactured product;

(g) "Endangered Species List" shall mean the list of species or subspecies of fish and wildlife found in other countries that are threatened with worldwide extinction which is contained in Appendix A to this Part 17;

(h) "Native Endangered Species List" shall mean the list of species or subspecies of fish and wildlife native to the United States that are threatened with extinction, and which is published from time to time in the FEDERAL REGISTER.

(i) "Taken" shall mean captured, killed, collected, or otherwise removed from the wild in the country of origin;

(j) Except insofar as such items include any species or subspecies which appears on the Endangered Species List, "shellfish or fishery products imported for commercial purposes" shall mean the following items as further defined in the "Tariff Schedules of the United States Annotated," United States Tariff Commission TC Publication 304, under the TSUS numbers shown in parentheses below:

- (1) Frogs (TSUS No. 106.60).
- (2) Frog meat (TSUS No. 107.65).
- (3) Fish, fresh, chilled, or frozen (TSUS Nos. 110.10-110.70)—trout and salmon to conform to 50 CFR 13.7 and 13.12.
- (4) Fish, dried, salted, pickled, smoked or kippered (TSUS Nos. 111.10-111.92).
- (5) Fish in airtight containers (TSUS Nos. 112.01-112.94).
- (6) Other fish products (TSUS Nos. 113.01-113.60).

(7) Shellfish (TSUS Nos. 114.01-114.55).

(8) Marine-animal oils (TSUS Nos. 177.02-177.40).

(9) Sod oil (TSUS No. 178.05).

(10) Products of American fisheries (TSUS Nos. 180.00-180.20).

(11) Edible preparations (TSUS Nos. 182.05, 182.11, 182.48, 182.50).

(12) Animal feeds (TSUS Nos. 184.54, 184.55).

(k) "Seized property" shall mean anything seized pursuant to sections 4 or 7 of the Act or 16 U.S.C. 851 et seq.;

(l) "Permit" shall include any letter from the Department of the Interior so designated and signed by a properly authorized officer;

(m) "Wild" shall refer to all creatures living in the wild state; or to all creatures that, whether raised in captivity or not, are normally found in the wild state;

(n) "Country of origin" shall mean the country where the fish or wildlife was taken from the wild, or the country of natal origin of the fish or wildlife;

(o) "State" shall mean the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam;

(p) "The United States" shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam;

#### § 17.3 Importation at designated ports.

(a) All fish and wildlife, which is intended for importation into the United States except shellfish or fishery products imported for commercial purposes, must enter the United States at designated receiving stations at the customs ports set forth in Appendix B to this Part 17.

(b) Any fish or wildlife, except shellfish or fishery products imported for commercial purposes, which enters the United States at a place other than a designated port may not be imported at that place, but must be moved as quickly as possible under customs bond, to a designated port, unless the exceptions set forth in Appendix B to this part apply.

(c) Nothing in this part shall be construed to allow the entry or importation of any fish or wildlife: (1) Coming within the meaning of the regulations of the Department of Agriculture regarding the importation of certain animals and poultry and certain animal and poultry products, appearing at 9 CFR 92.1 et seq., except at the ports designated in such regulations; (2) regulated in § 13.1 of this chapter et seq., regarding the importation of injurious wildlife, except in accordance with such regulations.

#### § 17.4 Importation of fish or wildlife—inspection and documentation.

(a) All fish and wildlife which is intended to be imported into the United States or into any foreign trade zone, is subject to inspection and clearance for such importation, by authorized personnel of the Bureau of Sport Fisheries and Wildlife, or by any customs officer. Such inspection may include examination of



the fish or wildlife, the package or other container in which such fish or wildlife was transported, and the documents accompanying the shipment.

(b) A properly executed Declaration for the Importation of Fish or Wildlife (Form 3-177) must be filed with the District Director of Customs at the port of entry where actual customs inspection for clearance or release occurs, for all fish or wildlife imported into the United States. The Form 3-177 shall show, for each species or subspecies imported, the common and scientific names, number, country of origin, whether or not on the Endangered Species List, whether or not subject to laws or regulations in any foreign country regarding its taking, transportation, or sale. A copy of the invoice and copies of documents required pursuant to paragraph (c) of this section must be attached to the Form 3-177.

(c) In any case where fish or wildlife is subject to laws or regulations of any foreign country regarding its taking, transportation, or sale, or in any case of importation of any primates, or Crocodylia (alligators and crocodiles); or wildlife of the families Felidae (cats), Rhinocerotidae (rhinoceros), Chelonidae (sea turtles), Falconidae (falcons and caracaras), Accipitridae (hawks and eagles), or Psittacidae (parrots and parakeets), the following documents must accompany the shipment:

(1) An export permit or other document from an appropriate government official, in English, or the original document and a certified translation thereof, from each country where the fish or wildlife is subject to regulations regarding its taking, transportation, or sale, which shows that such fish or wildlife was lawfully taken, transported or sold, or

(2) A consular certificate from an American Consul which shows that an appropriate government official has certified to the Consul the information required in subparagraph (2) of this paragraph.

Copies of any such documents must be attached to the Form 3-177 referred to in paragraph (b) of this section.

(d) The documentation requirements of paragraphs (b) and (c) of this section shall not apply to shellfish and fishery products imported for commercial purposes, except members of the family Chelonidae (sea turtles); to scientific specimens imported by persons approved pursuant to the provisions of Appendix B(2)(f) to this part, and which are clearly marked "Preserved Scientific Specimens—No Commercial Value—No Endangered Species;" to any case in which a Declaration for Free Entry of Animals or Birds Killed by United States Residents (Customs Form 3315) has been filed; or to the importation of fish caught by sport fishermen in Canada under a valid Canadian fishing license.

(e) The documentation required in paragraphs (b) and (c) of this section is in addition to any documentation which may be required by the Bureau of the Customs, including a consular certificate required by 19 U.S.C. 1527, or any

statement required in Appendix B to this part for the entry of fish or wildlife at nondesignated ports.

(f) In any instance where authorized personnel of the Bureau of Sport Fisheries and Wildlife are not available to inspect any shipment of fish or wildlife within a reasonable time at a designated port or a port which is being utilized pursuant to the exceptions set forth in Appendix B to this part, any customs officer may clear and release such fish or wildlife. In such cases, any non-Customs post-clearance enforcement measures shall proceed under laws and regulations administered by the Department of the Interior.

#### § 17.5 Importation of fish or wildlife—proof of compliance.

In any case where there is a reasonable doubt as to the identity of any fish or wildlife, or as to whether the importation in question is in compliance with the requirements of this part, the burden shall be on the importer to prove the identity of the fish or wildlife or to prove compliance with the regulations. Until such time as the importer can show acceptable proof of compliance, the Director, or the Supervisory Customs Inspector, may refuse to clear the shipment for importation, or may seize the shipment.

#### § 17.6 Importation of fish or wildlife—marking.

(a) Any fish or wildlife or any offspring, or product manufactured from such fish or wildlife, which is on the Endangered Species List and is imported into the United States under permit must have suitable identification from the Department of the Interior. Such identification may be obtained at any designated port of entry or from the Regional Director of the Bureau of Sport Fisheries and Wildlife.

(b) Any fish or wildlife on the Endangered Species List which originates outside the United States is subject to seizure and forfeiture if found in the possession of any person within the United States without the proper marking or other identification, unless such person can show by appropriate documentation that the fish or wildlife came into his possession prior to the effective date of the regulations in this part.

#### § 17.7 State markings.

If any fish or wildlife which originates in the United States and which is required to be marked or otherwise identified by the laws or regulations of the State in which it originated, or any fish and wildlife on the Native Endangered Species List, is found without such marking or other identification, it is subject to seizure and forfeiture.

#### § 17.8 Export permits.

(a) No fish or wildlife which appears on the Native Endangered Species List, may be exported from the United States unless accompanied by a special export permit issued by the Department of the Interior.

(b) Requests for such permits must be dated and in writing, and sent to the appropriate Regional Director of the Bu-

reau of Sport Fisheries and Wildlife (see Appendix C to this part) at least 7 days prior to export. The request shall contain the following information:

(1) Name and address of the applicant;

(2) Designation of the items to be exported, including species or subspecies, number, weight, method of shipment, and a description, such as "tanned hides;"

(3) Evidence, in the form of certificates, tags or tag serial numbers, or other documents from the State in which the fish or wildlife originated showing that such fish or wildlife was lawfully taken, transported, or sold;

(4) In those cases where no certificate, tag or tag serial number or other document is available from the State in which the fish or wildlife originated, the exporter may include the following certification:

I hereby certify that the State of (.....) from which the fish or wildlife named hereon originated, does not, to the best of my knowledge issue certificates, tags, or other documents showing that such fish or wildlife was lawfully taken, transported, or sold. I also certify that such fish or wildlife was lawfully taken, transported, or sold in the State from which it originated. I am aware that a false statement hereon may be subject to the criminal penalties of 18 U.S.C. 1001.

(c) The provisions of this section do not apply to the export of migratory birds for which export permits may be obtained pursuant to § 16.9 of this chapter.

#### § 17.9 Marking of packages or containers.

(a) Any package or other container holding fish or wildlife which is shipped, transported, carried, brought, or conveyed in interstate or foreign commerce must be marked, labeled, or tagged so as to plainly indicate the name and address of the shipper and the consignee, and, except for interstate shipments of furs, hides, and skins, the number and kind of the contents. This requirement shall not apply to packages or other containers holding shellfish and fishery products imported for commercial purposes, or mink, chinchilla, silver fox, blue fox, rabbit, or nutria for which a certification is inserted on the Form 3-177 required by § 17.4(b) in the case of importation, or for which a separate signed certification accompanies the shipping documents in the case of interstate movement or exportation, to the effect that the animal was bred and born in captivity for commercial purposes.

(b) (1) In any case where the marking or other identification of the package or other container under this section indicating in any way the contents thereof would create a significant possibility of theft of the package or its contents, the Director may, upon request of the owner thereof or his agent provide an identification symbol to be used in lieu of such marking, labeling, or tagging.

(2) Applications for use of an identification symbol must be dated and in writing, and should be submitted to the Director, Bureau of Sport Fisheries and



Wildlife, United States Department of the Interior, Washington, D.C. 20240. The application must contain the following:

- (i) Name and address of the applicant;
- (ii) Designation of the item or items to be imported, transported, etc., including species or subspecies, method(s) of shipment, and description, such as "tanned hides;"
- (iii) Estimated frequency and place(s) of importation;
- (iv) A statement of the reasons why marking, labeling, or tagging of a package to be imported, transported, etc., would create a significant possibility of theft of the package or its contents, including appropriate statistics, affidavits, or other documents;
- (v) A suggested mark or commercial symbol to be used by the applicant in identifying shipments of fish or wildlife;
- (vi) A certification in the following language:

I hereby certify that the foregoing information is complete and accurate, to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining an exemption from the marking and labeling requirements of 18 U.S.C. 44 and regulations promulgated thereunder, and that any false statement hereon may be subject to the criminal penalties of 18 U.S.C. 1001.

- (vii) The signature of the applicant.
- (3) Upon approval of an application for the use of an identifying symbol, the Director shall assign such a symbol. This symbol must be shown on every package or container used by the applicant for the shipment, transportation, carriage, bringing, or conveyance of fish or wildlife in interstate or foreign commerce. The symbol must also appear on all shipping documents, and on any documents required by this part to accompany the fish or wildlife.

(4) The applicant shall, from the date of notification of the symbol, maintain complete and accurate records of all fish or wildlife which were shipped, transported, carried, brought, or conveyed in interstate or foreign commerce and which were identified by means of such symbol. The records shall include the number, species or subspecies, description of the package or container, method of shipment, time and place of shipment, and general description of the items. Such records shall be open to inspection, auditing, or copying by any authorized employee of the Bureau of Sport Fisheries and Wildlife at any time during regular business hours.

#### § 17.10 Importation of endangered species—general restrictions.

Except as provided elsewhere in this part, no person may import from any foreign country into the United States any species or subspecies of fish or wildlife which appears on the Endangered Species List. For the purposes of this section, importation shall include entry into a foreign trade zone, or any transit of or transshipment through any portion of the United States.

#### § 17.11 Endangered species list.

(a) The species or subspecies of fish or wildlife shown on the Endangered Species List are deemed to be threatened with worldwide extinction. The List may be revised from time to time as additional data becomes available which shows, to the Secretary's satisfaction, that a species or subspecies should be added to or removed from the List.

(b) The Bureau of Sport Fisheries and Wildlife shall receive and maintain data regarding endangered species and subspecies of fish and wildlife. At least once every 5 years, said Bureau shall conduct a thorough review of the Endangered Species List. Any proposed revisions to the List shall be published in the FEDERAL REGISTER, with an opportunity for interested persons to submit written comments and suggestions.

(c) (1) Any interested person may at any time submit a request for a review of any particular listed species or subspecies. Such requests must be dated and in writing, and should be submitted to the Director, Bureau of Sport Fisheries and Wildlife, United States Department of the Interior, Washington, D.C. 20240. In order to be considered, requests must show in full the following information:

- (i) Name and address of the person making the request;
- (ii) Association, organization, or business, if any, represented by the person making the request;
- (iii) Reasons why the person making the request, or the persons he represents, should be considered to be an "interested person;"
- (iv) Designation of the particular species or subspecies in question;
- (v) Narrative explanation of the request for review and justification for a change in the status of the species or subspecies in question;
- (vi) Complete supporting data for the request;
- (vii) Signature of the person making the request.

(2) If it is determined that the request has presented substantial evidence warranting a review, a finding to that effect shall be published in the FEDERAL REGISTER. Such finding shall give notice and opportunity to all other interested persons to participate in the review of the particular species or subspecies, by submission of written data.

#### § 17.12 Importation of endangered species—exceptions.

(a) Commercial permit:

(1) In order to avoid undue economic hardship, any person importing any species or subspecies shown on the Endangered Species List, for commercial purposes, under any contract entered into prior to the effective date of the FEDERAL REGISTER notice placing such species or subspecies on the Endangered Species List, may apply for a permit allowing the importation of such fish or wildlife. The application shall be dated and in writing and submitted to the Director, Bureau of Sport Fisheries and Wildlife, United States Department of

the Interior, Washington, D.C. 20240, and must contain the following:

- (i) Name and address of the applicant;
- (ii) Designation of the item or items to be imported including species or subspecies, number, weight, method of shipment, and description, such as "tanned hides;"
- (iii) Purpose of the importation;
- (iv) Copy of the contract under which such fish or wildlife is to be imported, showing the name and address of the seller or consignor, date of the contract, contract price, number and weight, and description of the item;
- (v) If live fish or wildlife are involved, include a detailed description of the type, size, and construction of the container, arrangements for feeding, watering and otherwise caring for the fish or wildlife in transit, and arrangements for caring for the fish or wildlife on entry into the United States;
- (vi) Copies of contracts for the importation of fish or wildlife of the same or similar species or subspecies for the calendar year immediately preceding the date of the contract in question;
- (vii) A statement of the reasons why failure to fulfill the contract in question would lead to economic hardship, with all supporting documents;
- (viii) A certification in the following language:

I hereby certify that the foregoing information is complete and accurate, to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining an exemption from the requirements of the Endangered Species Conservation Act of 1969 (83 Stat. 275), and regulations promulgated thereunder, and that any false statement hereon may be subject to the criminal penalties of 18 U.S.C. 1001.

- (ix) The signature of the applicant.
- (2) Any permits granted pursuant hereto will be strictly limited to allow importation only as necessary to avoid undue economic hardship, and in any case shall not be valid for more than 1 year from the effective date of the FEDERAL REGISTER notice placing such species or subspecies on the Endangered Species List.

(3) If a permit is denied, the applicant shall have 20 days after the date of the letter containing notice of such denial in which to request a full hearing regarding the application for such permit.

(b) Zoological, educational, scientific, or preservation permit:

(1) Any person importing any species or subspecies on the Endangered Species List for zoological, educational, and scientific purposes, or for the propagation of such fish or wildlife in captivity for preservation purposes, may apply for a permit allowing the importation of such fish or wildlife. The application shall be dated and in writing, and submitted to the Director, Bureau of Sport Fisheries and Wildlife, United States Department of the Interior, Washington, D.C. 20240. It shall contain the following information:



(i) The name and address of the applicant;

(ii) The number of specimens and the common and scientific names (genus and species) of each species or subspecies of fish or wildlife proposed to be imported;

(iii) Complete statement of the purpose of such importation;

(iv) If live fish or wildlife are involved, include a detailed description of the type, size, and construction of the container, arrangements for feeding, watering, and otherwise caring for the fish or wildlife in transit, and arrangements for caring for the fish or wildlife on entry into the United States;

(v) The address and a complete description of the facilities where such fish or wildlife will be kept;

(vi) A statement, if applicable, of the applicant's qualifications and previous experience in caring for and handling captive live wildlife;

(vii) A copy of the contract or other arrangements under which such fish or wildlife is to be imported, showing the name and address of the seller or consignor, date of the contract, contract price, number and weight (if available), and description of the items;

(viii) A certification in the following language:

I hereby certify that the foregoing information is complete and accurate, to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining an exemption from the requirements of the Endangered Species Conservation Act of 1969 (83 Stat. 275), and that any false statement hereon may be subject to the criminal penalties of 18 U.S.C. 1001.

(ix) The signature of the applicant.

(2) Permittees shall comply with all terms, conditions, or restrictions prescribed in the permit.

(c) Permits issued pursuant to this part shall not be construed to authorize the importation or other acquisition, possession, transportation, or disposal of fish or wildlife contrary to any applicable Federal or State laws or regulations and do not relieve or eliminate responsibility for complying with any applicable health, quarantine, agriculture, customs permit, or other requirements imposed by the laws or regulations of the other duly authorized Federal and State agencies.

#### § 17.13 Hearings.

(a) Whenever opportunity for a hearing is required by § 17.12 or sections 4 or 7 of the Act, reasonable notice shall be given by personal service or by registered or certified mail, return receipt requested, to the affected person. This notice shall advise such person of the action proposed to be taken, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action. The notice will either (1) fix a date not less than 20 days after the date of such notice within which the person receiving the notice may request that the

matter be scheduled for a hearing, or (2) advise the person receiving the notice that the matter has been set down for hearing at a stated time and place.

(b) The time and place fixed shall be reasonable and shall be subject to change for cause. The recipient of a notice of hearing may waive a hearing and submit written information and argument for the record. The failure of the recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is available.

(c) All hearings shall be presided over by a hearing examiner appointed under 5 U.S.C. 3105. Immediately upon the initiation of any proceeding, an examiner will be assigned to the case and the parties notified of the assignment. Thereafter, all motions, applications, and other papers shall be filed with the examiner.

(d) In all proceedings under this section, the respondent and the Department of the Interior shall have the right to be represented by counsel.

(e) (1) The hearing shall be conducted in conformity with section 556 of title 5 U.S.C., and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both the Department of the Interior and the respondent shall be entitled to introduce evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonable and necessary by the examiner conducting the hearing. The hearing examiner may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(3) Hearings shall be recorded stenographically by an official reporter. The transcript of testimony and exhibits together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. Copies of the transcript may be obtained by any party from the official reporter upon payment of the fees fixed therefor.

(f) Promptly after conclusion of the hearing, the examiner shall render a decision. The decision shall be in writing and shall include a statement of (1) findings and conclusions and the reasons or

basis therefor, on the material issues of fact, law, expertise, or discretion presented on the record and (2) the appropriate rulings, order, or denial thereof with the effective date. The examiner's decision shall be the final and binding administrative determination. A copy of the decision shall be given to each party.

(g) Whenever a hearing is waived pursuant to paragraph (a) of this section, a decision shall be made by the hearing examiner on the record and a copy of such decision shall be given in writing to the affected persons.

#### § 17.14 Holding, return, and disposal of seized property.

(a) Any authorized employee or officer of the Customs who has seized any property shall deliver such seized property to the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife (see Appendix C to this part) or his designee, who shall either hold such seized property, or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. The Regional Director of the Bureau of Sport Fisheries and Wildlife, or his designee, shall attempt to notify the owner or consignee immediately by telephone, but in any case shall, within 48 hours of the receipt of the seized property, mail notice thereof by registered or certified mail, return receipt requested, to the owner or consignee. Such notice shall describe the seized property, including its declared value, and shall state the time, place, and reason for the seizure. Such notice shall also give the name and telephone number of a person within the Regional Director's Office who may be contacted regarding such seized property.

(c) The Regional Director of the Bureau of Sport Fisheries and Wildlife may, upon written request of the owner or consignee, accept a bond or other satisfactory surety in place of the seized property. Such bond shall be in the full penal amount of \$5,000 or equal to the value of the seized property, whichever is less, and shall only be allowed where the Regional Director of the Bureau of Sport Fisheries and Wildlife reasonably believes that the owner or consignee intends to maintain possession or control of the seized property until all proceedings regarding the seized property are completed, or where the seized property is of such a nature that its release will not hamper the aims of the Act.

(d) If, at the conclusion of the appropriate proceedings, the seized property is to be returned to the owner or consignee, the Regional Director of the Bureau of Sport Fisheries and Wildlife shall issue a letter authorizing the return of seized property to the owner or consignee. This letter shall be sent by registered mail, return receipt requested,



and shall identify the owner or consignee, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released, provided it is properly marked in accordance with applicable State or Federal requirements. All charges regarding the storage, care, or handling of the seized property accruing within 5 days after the date of the return receipt shall be for the account of the owner or consignee.

(e) Disposal of seized property: If, at the conclusion of the appropriate proceedings, the seized property is to be forfeited to the United States, the Regional Director of the Bureau of Sport Fisheries and Wildlife shall arrange for its disposal, provided that any forfeited property shall be held by the Regional Director of the Bureau of Sport Fisheries and Wildlife until the conclusion of all court proceedings connected therewith. All charges which have accrued regarding the storage, care, or handling of the seized property shall be for the account of the former owner or consignee.

#### § 17.15 Forfeiture of seized property.

(a) Any fish or wildlife, product, property or item which has been seized pursuant to the Act may be proceeded against in any court of competent jurisdiction for forfeiture to the Secretary for disposition by him.

(b) If such proceeding is not instituted within 30 days following the disposition of proceedings in accordance with these regulations involving the assessment of a civil penalty, the seized wildlife, product, property, or item shall be returned to the owner or consignee.

(c) Upon conviction for a criminal penalty pursuant to the Act, any seized wildlife, or product thereof, shall be forfeited to the Secretary for disposition by him as he may deem appropriate. If no conviction results from any such alleged violation, the Secretary may commence civil penalty proceedings in accordance with the regulations in this part. If a civil penalty proceeding is not instituted within 30 days following the final disposition of the criminal case involving such violation, the seized property shall be returned to the owner or consignee.

#### § 17.16 Other laws applicable.

Nothing in this part, nor any permit, exception, or permission issued hereunder, shall be construed to relieve any person from any provision of any other laws, rules, or regulations of the States or the United States.

**Effective date.** These regulations shall be effective as of June 3, 1970, except that §§ 17.3 and 17.4 shall not be effective until August 3, 1970.

FRED J. RUSSELL,

Acting Secretary of the Interior.

MAY 25, 1970.

#### APPENDIX A

##### UNITED STATES' LIST OF ENDANGERED FOREIGN FISH AND WILDLIFE

The list of endangered foreign fish and wildlife has been compiled from data supplied by international conservation organizations, foreign fish and wildlife agencies, individual scientists and trade sources. If a candidate species is not listed it may be because it is not endangered throughout its range or because there is insufficient evidence to warrant its inclusion on the list at this time. The list is under continual review. Factual data are welcome and should be submitted. The "Where Found" column is a general guide to the native countries or regions where the named animals are found. It is not intended to be definitive.

Mammals		
Common name	Scientific name	Where found
Thylacine	<i>Thylacine cynocephalus</i>	Tasmania.
Cuban solenodon	<i>Atopogale cubana</i>	Cuba.
Haitian solenodon	<i>Solenodon paradoxus</i>	Dominican Republic.
Lemurs, all species	Lemuridae, all members of the genera <i>Lemur</i> , <i>Haplorhina</i> , <i>Lepilemur</i> , <i>Cheirogaleus</i> , <i>Microcebus</i> , <i>Phaner</i> .	Madagascar and Comoro Islands.
Indri, Sifakas, Avoahis, all species	Indridae, all members of the genera <i>Indri</i> , <i>Avahi</i> , <i>Propithecus</i> .	Madagascar and Comoro Islands.
Aye-Aye	<i>Daubentonius madagascariensis</i>	Madagascar.
Spider monkey	<i>Ateles geoffroyi frontatus</i>	Guatemala.
Spider monkey	<i>Ateles geoffroyi geoffroyi</i>	Guatemala.
Spider monkey	<i>Ateles geoffroyi ornatus</i>	Costa Rica.
Spider monkey	<i>Ateles geoffroyi panamensis</i>	Costa Rica.
Red-backed squirrel monkey	<i>Saimiri orstedii</i> ( <i>Saimiri sciurus orstedii</i> )	Costa Rica.
Woolly spider monkey	<i>Brachyteles arachnoides</i>	Brazil.
White-nosed saki	<i>Citropotes albinus</i>	Brazil.
Uakari, all species	<i>Cacajao</i> spp.	Peru, Colombia, Venezuela, Brazil and Ecuador.
Goeldi's marmoset	<i>Callimico goeldi</i>	Brazil.
Golden-rumped, golden-headed tamarin golden lion marmoset	<i>Leontideus</i> spp.	Brazil.
Lion-tailed macaque	<i>Macaca silenus</i>	India.
Tana River mangabey	<i>Cercothrix g. galutius</i>	Kenya.
Douc langur	<i>Pygathrix nemaeus</i>	Indonesia.
Pagi Island langur	<i>Simulans concolor</i>	Indonesia.
Red colobus	<i>Colobus kirkii</i>	Kenya.
Zanzibar red colobus	<i>Colobus badius rufimistratus</i>	Zanzibar (Tanzania).
Kloss' gibbon	<i>Hylobates klossi</i>	Indonesia.
Pileated gibbon	<i>Hylobates pileatus</i>	Malaysia.
Orangutan	<i>Pongo pygmaeus</i>	Indonesia, Malaysia, Brunei.
Gorilla	<i>Gorilla gorilla</i>	Central and western Africa.
Brazilian three-toed sloth	<i>Bradypus torquatus</i>	Brazil.
Pink fairy armadillo	<i>Chlamyphorus truncatus</i>	Argentina.
Volcano rabbit	<i>Romerolagus diazi</i>	Mexico.
Mexican prairie dog	<i>Cynomys merriami</i>	Mexico.
Thin-spined porcupine	<i>Chaetomys subspinosus</i>	Brazil.
Sperm whale	<i>Physeter catodon</i>	Worldwide.
Baleen whales, all species	Mysticete, all members of the genera <i>Balaena</i> , <i>Megaptera</i> , <i>Eubalaena</i> , <i>Eschrichtius</i> .	Worldwide.
Northern kit fox	<i>Vulpes velox hesperis</i>	Canada.
Asiatic wild dog	<i>Cuon alpinus</i>	Russia, Pakistan, India (Central and Southeast Asia).
Mexican grizzly bear	<i>Ursus arctos nelsoni</i>	Mexico.
Formosan yellow-throated marten	<i>Martes flavigula chrysopygia</i>	Formosa.
Black-footed ferret	<i>Mustela nigripes</i>	United States, Canada.
Cameron clawless otter	<i>Paronyx microdon</i>	Cameroon.
La Plata otter	<i>Lutra platensis</i>	Uruguay, Argentina, Bolivia.
Giant otter	<i>Pteromys brasiliensis</i>	Amazon Basin.
Barbary hyena	<i>Hyaena hyaena barbara</i>	Morocco.
Brown hyena	<i>Hyaena brunnea</i>	Southern Africa.
Asiatic cheetah	<i>Acinonyx jubatus venaticus</i>	Russia, Afghanistan, Iran, Saudi Arabia (Formerly India and Pakistan).
Spanish lynx	<i>Felis pardina</i>	Spain.
Barbary serval	<i>Felis serval constantina</i>	Algeria.
Formosan clouded leopard	<i>Neofelis nebulosa brachyurus</i>	Formosa.
Asiatic lion	<i>Panthera leo persica</i>	India.
Sinal leopard	<i>Panthera pardus jarvisi</i>	Sinal, Saudi Arabia.
Barbary leopard	<i>Panthera pardus panthera</i>	Morocco, Algeria, Tunisia.
Anatolian leopard	<i>Panthera pardus tulliana</i>	Lebanon, Israel, Jordan, Turkey, Syria.
Bali tiger	<i>Panthera tigris balica</i>	Bali.
Javan tiger	<i>Panthera tigris sondaica</i>	Indonesia.
Caspian tiger	<i>Panthera tigris virgata</i>	Russia, Afghanistan, Iran.
Sumatran tiger	<i>Panthera tigris sumatrae</i>	Indonesia.
Mediterranean monk seal	<i>Monachus monachus</i>	Mediterranean.
West Indian (Florida) manatee	<i>Trichechus manatus</i>	United States, Costa Rica, Guatemala, Panama, Brazil, Venezuela.
Amazonian manatee	<i>Trichechus inunguis</i>	Peru, Amazon.
Asian wild ass	<i>Equus hemionus</i>	Pakistan, Iran, India, China, Afghanistan, Central Asia.
African wild ass	<i>Equus asinus</i>	Ethiopia, Somalia, Sudan.
Mountain tapir	<i>Tapirus pinchaque</i>	Colombia, Ecuador.
Brazilian tapir	<i>Tapirus terrestris terrestris</i>	Venezuela, Argentina, Brazil.
Central American tapir	<i>Tapirus bairdii</i>	Guatemala, Costa Rica, Southern Mexico to Colombia and Ecuador.
Sumatran rhinoceros	<i>Didemnoceros sumatrensis</i>	Southeast Asia—East Pakistan to Vietnam to Indonesia.
Javan rhinoceros	<i>Rhinoceros sondaicus</i>	Indonesia, Burma, Thailand.
Northern white rhinoceros	<i>Ceratotherium simum cottoni</i>	Congo, Uganda, Sudan.
Pygmy hog	<i>Sus salvanius</i>	India, Nepal.
Vicuna	<i>Vicugna vicugna</i>	Peru, Bolivia.
Swamp deer	<i>Cervus dussumieri</i>	India, Nepal.
Kashmir stag, hangul	<i>Cervus elaphus hangul</i>	Kashmir.
Barbary stag	<i>Cervus elaphus barbara</i>	Morocco, Tunisia, Algeria.
M'Neill's deer	<i>Cervus elaphus macneilli</i>	China, Tibet.
Shou	<i>Cervus elaphus wallichi</i>	Tibet, Bhutan.







Amphibians and reptiles

Common name	Scientific name	Where found
Israel painted frog	<i>Discophrys nigriventris</i>	Israel.
Stephen Island frog	<i>Leiopelma hamiltoni</i>	New Zealand.
River terrapin, Tuntong	<i>Batagur baska</i>	Burma, India, Indonesia, Malaysia, Pakistan.
Galapagos tortoise	<i>Testudo elephantopus</i>	Galapagos (Ecuador).
Madagascar radiated tortoise	<i>Testudo radiata</i>	Madagascar.
Hawksbill turtle	<i>Eretmochelys imbricata</i>	Tropical seas.
Leatherback turtle	<i>Dermochelys coriacea</i>	Tropical and temperate seas.
South American river turtle	<i>Podocnemis carolina</i>	Orinoco and Amazon River Basin.
South American river turtle	<i>Podocnemis unifilis</i>	Orinoco and Amazon River Basin.
Short-necked or swamp tortoise	<i>Paedemys umbrina</i>	Australia.
Yacare	<i>Caiman yacare</i>	Bolivia, Argentina, Peru, Brazil.
Orinoco crocodile	<i>Crocodylus intermedius</i>	Orinoco River Drainage.
Cuban crocodile	<i>Crocodylus rhombifer</i>	Cuba.
Morelet's crocodile	<i>Crocodylus moreletii</i>	Mexico, British Honduras, Guatemala.
Nile crocodile	<i>Crocodylus niloticus</i>	Africa.
Gavial	<i>Gavialis gangeticus</i>	Pakistan.
Round Island day gecko	<i>Phelsuma guentheri</i>	Mauritius.
Day gecko	<i>Phelsuma neotoni</i>	Mauritius.
Barrington land lizard	<i>Conolophus pallidus</i>	Galapagos.
Tuatara	<i>Sphenodon punctatus</i>	New Zealand.
Jamaica boa	<i>Epicrates subflavus</i>	Jamaica.
Anegada ground iguana	<i>Cyclura pinguis</i>	Anegada Island.

Fish

Ala balik	<i>Salmo platycephalus</i>	Turkey.
Cheek	<i>Acanthorhynchus handirachi</i>	Turkey.
Myako tanago	<i>Tanaka tanago</i>	Japan.
Ayamodoki	<i>Hymenophys curia</i>	Japan.
Mexican blindcat	<i>Pseudocoryphopterus</i>	Mexico.
Nekogiri	<i>Careochromis ichikawai</i>	Japan.
Giant catfish	<i>Pangasius glanis</i>	Thailand.
Catfish	<i>Pangasius sanitwongsei</i>	Thailand.

Mollusk

Mollusk	<i>Papustyla pulcherrima</i>	Marus Island (Admiralty Island).
---------	------------------------------	----------------------------------

APPENDIX B

DESIGNATED PORTS AND EXCEPTIONS THEREOF

1. *Designated ports.* The following ports are designated as ports of entry for all fish and wildlife, except shellfish and fishery products imported for commercial purposes which may enter through any Customs district or port: New York, New York; Miami, Florida; Chicago, Illinois; San Francisco, California; Los Angeles, California.

2. *Specific exceptions.* (a) Tampa, Florida, is a port of entry for fish.

(b) In any case of emergency diversion of a shipment of live fish or live wildlife to a place in the United States other than a designated port, the Regional Director of the Bureau of Sport Fisheries and Wildlife (see Appendix C) or his designee may make appropriate arrangements for the immediate clearance for importation of such fish or wildlife, where it appears that delay in clearance would endanger or impair the health of such fish or wildlife. In any instance where the Regional Director of the Bureau of Sport Fisheries and Wildlife or his designee can not be reached, any customs officer is authorized to clear and release the fish or wildlife upon receipt, where applicable, of a properly executed Declaration for the Importation of Fish or Wildlife (Form 3-177).

(c) (1) Except for any species or subspecies which appears on the Endangered Species List, any fish or wildlife whose country of origin is Canada, or which was previously exported from the United States into Canada, may enter the United States through any of the ports designated in section 1 of Appendix B or through any of the following customs ports of entry:

- (i) State of Alaska—Tok Junction.

<sup>1</sup> As a result of hearings on ports of entry, the Port of Honolulu, Hawaii, was deleted, and the Port of New Orleans, Louisiana, will be added if approval by the Secretary of the Treasury is secured as required by law.

- (ii) State of Washington—Blaine, Sumas, Oroville.
- (iii) State of Idaho—Eastport.
- (iv) State of Montana—Sweetgrass, Raymond.

- (v) State of North Dakota—Portal, Pembina, Dunseith.

- (vi) State of Minnesota—Noyes, International Falls, Grand Portage.

- (vii) State of Michigan—Sault Sainte Marie, Detroit, Port Huron.

- (viii) State of Ohio—Cleveland.

- (ix) State of New York—Buffalo-Niagara Falls, Ogdensburg, Rouses Point.

- (x) State of Vermont—Highgate Springs, Derby Line.

- (xi) State of Maine—Houlton, Calais.

(2) Except for any species or subspecies which appears on the Endangered Species List, any fish or wildlife whose country of origin is Mexico, or which was previously exported from the United States into Mexico, may enter the United States through any of the ports designated in section 1 of Appendix B or through any of the following customs ports of entry:

- (i) State of California—Calexico, San Diego-San Ysidro.

- (ii) State of Arizona—Nogales, San Luis.

- (iii) State of Texas—El Paso, Laredo, Brownsville.

(3) Prior to any entry pursuant to (1) or (2) above, the importer or his agent must submit a signed and dated statement to the customs officer at the port of entry showing his name and address, the number and a description of the items being imported, and containing the following certification: "Subject to the criminal penalties of 18 U.S.C. 1001, I hereby certify that the fish or wildlife named hereon does not appear on the Endangered Species List and originated in (Canada) (Mexico) or were previously exported from the United States into (Canada) (Mexico)."

(c) (1) Except for any species or subspecies which appears on the Endangered

Species List, fish or wildlife which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and which are not to be forwarded or transshipped within the United States may be imported through any of the ports designated in section 1 of Appendix B or at the following ports:

- (i) Alaska—Juneau, Anchorage, Fairbanks.

- (ii) Hawaii—Honolulu.

- (iii) Puerto Rico—San Juan.

- (iv) Guam—Honolulu, Hawaii.

- (v) American Samoa—Honolulu, Hawaii.

(2) Prior to any such entry, the importer or his agent must submit a signed and dated statement to the customs officer at the port of entry showing his name and address, the numbers and descriptions of the items being imported, and containing the following certification: "Subject to the criminal penalties of 18 U.S.C. 1001, I hereby certify that the fish or wildlife named hereon does not appear on the Endangered Species List and are not to be forwarded or transshipped within the United States."

(d) (1) Except for any species or subspecies which appears on the Endangered Species List, fish or wildlife imported from Mexico or Canada by an individual as game or a game trophy lawfully taken in Mexico or Canada, may enter the United States at any port of entry.

(2) Such entry must be accompanied by Customs Form 3315, Declaration for Free Entry of Game Animals or Birds Killed by United States Residents.

(e) Except for any species or subspecies which appears on the Endangered Species List, fish or wildlife products which are transported accompanied or unaccompanied as personal effects or as part of household effects, including game trophies transported as part of household effects but excluding any other game or game trophies, may enter the United States at any customs port of entry.

(f) Any person who has obtained the prior approval of the Secretary may import scientific specimens, except specimens of species or subspecies which appear on the Endangered Species List, at any customs port of entry. Approval may be obtained by applying to the Director, Bureau of Sport Fisheries and Wildlife, United States Department of the Interior, Washington, D.C. 20240. The application shall contain the following information:

- (i) Name, address, and institutional affiliations of the applicant;

- (ii) General description of types of specimens normally imported or received, along with documentation of such importation or receipt;

- (iii) Complete description of purposes or uses of such scientific specimens;

- (iv) Any other information deemed necessary by the Director;

(v) A certification in the following language: "I hereby certify that the foregoing information is complete and accurate, to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining an exemption from the requirements of the Endangered Species Conservation Act of 1969 (83 Stat. 275), and that any false statement hereon may be subject to the criminal penalties of 18 U.S.C. 1001."

- (vi) Signature of the applicant;

(g) Nothing in this subsection shall be construed as allowing the transportation of migratory birds and game mammals or fish to and from Canada or Mexico in any way contrary to the provisions of Parts 10, 13, and 15 of this chapter.



3. *Exception by permit.* (a) Any person may apply for a permit to import fish or wildlife at any non-designated port. The application must be dated and in writing, and should be submitted to the Regional Director of the Bureau of Sport Fisheries and Wildlife (see Appendix C) at least 10 days prior to entry. It shall contain the following:

(i) The name and address of the applicant;  
(ii) Designation of the item or items to be entered, including species or subspecies, number, method of shipment, and description, such as "tanned hides;"

(iii) Purpose of the importation;

(iv) Intended port of entry;

(v) A statement of the reasons why importation should be allowed at the requested port of entry rather than at a designated port, including appropriate documentation or affidavits;

(vi) If the permit is being requested for a series of importations over a period of time, include a detailed narrative statement of the circumstances, along with documentary evidence showing a previous pattern of such importation for at least one year, or other documentary evidence as required by the circumstances;

(vii) A certification in the following language: "I hereby certify that the foregoing information is complete and accurate, to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining an exemption from the requirements of the Endangered Species Conservation Act of 1969 (83 Stat. 275) and regulations promulgated thereunder, and that any false statement hereon may be subject to the criminal penalties of 18 U.S.C. 1001."

(viii) Signature of the applicant.

(b) The issuance of permits under this section will be limited to those applicants

who can show, to the satisfaction of the Regional Director of the Bureau of Sport Fisheries and Wildlife, sufficient economic hardship or other reasonable justification for entry at a non-designated port. Permits may cover a single importation, a series of related importations, or importation over a specified period of time.

(c) Any permit issued under this section may specify any conditions deemed necessary by the Regional Director of the Bureau of Sport Fisheries and Wildlife, including the requirement that the applicant pay any reasonable costs incurred by the Department in inspecting the shipment(s) at a non-designated port.

#### APPENDIX C

##### REGIONAL DIRECTORS

Following are the addresses of the various Regional Directors of the Bureau of Sport Fisheries and Wildlife, Department of the Interior:

Region 1: Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, 730 NE, Pacific Street, P.O. Box 3737, Portland, Oregon 97208. Telephone: 503 234-4050.

Includes: Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.

Region 2: Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, Federal Building, P.O. Box 1306, 517 Gold Avenue SW., Albuquerque, New Mexico 87103. Telephone: 505 843-2321.

Includes: Arizona, Colorado, Kansas, New Mexico, Oklahoma, Texas, Utah, Wyoming.

Region 3: Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Telephone: 612 725-3500.

Includes: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, North & South Dakota, Wisconsin.

Region 4: Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, Peachtree-Seventh Building, Atlanta, Georgia 30323. Telephone: 404 526-5100.

Includes: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North & South Carolina, Tennessee, Virginia, District of Columbia.

Region 5: Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, U.S. Post Office and Courthouse, Boston, Massachusetts 02109. Telephone: 617 223-2961.

Includes: Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia.

[F.R. Doc. 70-6666; June 1, 1970; 8:45 a.m.]